

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0724**

In the Matter of the Welfare of the Children of:
I. M. S., Parent.

**Filed November 20, 2023
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-JV-22-1045

Nicole S. Gronneberg, Adult Representation Services, Minneapolis, Minnesota (for appellant-mother I.M.S.)

T.B., Brooklyn Center, Minnesota (pro se respondent-father)

Mary F. Moriarty, Hennepin County Attorney, Mary M. Lynch, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services Department)

Julian Williams, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-mother challenges the district court's order for termination of parental rights (TPR), arguing that the district court abused its discretion by concluding that TPR is in the children's best interests and considering evidence not admitted. We affirm.

FACTS

Appellant-mother I.M.S. was the custodial parent of two children. Respondent-father T.B. is the children's adjudicated father. In September 2021, Hennepin County Child Protection received a report that mother's boyfriend had physically abused the children. Earlier that month, mother had arranged for the children, ages four and five years old, to live with their paternal grandmother. The children asked to remain living with their grandmother because they were afraid of mother's boyfriend.

On October 6, 2021, a child-in-need-of-protection-or-services (CHIPS) petition was filed. That day, the children's out-of-home placement was court-ordered; they continued living with their paternal grandmother. In March 2022, the children were adjudicated CHIPS. Respondent Hennepin County Human Services Department (the department) created a reunification case plan for mother. Mother was required to obtain and maintain safe and suitable housing, complete parenting-assessment and domestic-abuse programs and follow recommendations, and cooperate with the department. Pursuant to the CHIPS adjudication, father was offered a voluntary case plan.

In May 2022, the department petitioned to terminate mother's parental rights. The department alleged that despite its reasonable reunification efforts, mother failed to correct the conditions requiring out-of-home placement. Mother had no contact with the department or the children since February 2022. The department believed that mother moved to Chicago. The department alleged that TPR was in the children's best interests because they could not be returned to mother in the foreseeable future, and they needed permanency.

On March 1, 2023, the district court held a trial on the TPR petition. The children had been in court-ordered out-of-home placement for 511 days. On March 28, 2023, the district court filed an order for TPR. The district court noted that it received by stipulation certain exhibits limited to “case note entries by the [d]epartment detailing their own efforts, and to the children’s reports of abuse.”

The district court found the social worker “credible and persuasive.” The district court found that the children reported that mother’s boyfriend abused them. He hit them with a “hard belt,” caused visible injuries to their backs, buttocks, and leg, and choked one of the children. The district court also found that one child reported that mother physically abused the children. The department had found that a preponderance of evidence showed physical abuse committed by mother and mother’s boyfriend.

The district court did not find mother credible. The district court found that mother failed to comply with her case plan. Mother requested more time to work her case plan, but the district court found that there was no evidence that mother was prepared to work her case plan. The district court found that mother resides in another state, does not have stable housing, and admitted that she could not take the children immediately.

The district court found father credible but gave his testimony “limited weight” because of his past relationship with mother, he was not represented by counsel, and he appeared to be influenced by how the outcome could impact his parental rights. For example, as the district court noted, when father was asked if he supported the TPR, he initially testified that “he did not know how to answer.” The district court found that father “suggested that he does not believe in [TPR] in general and that he wants his children to

be placed with him permanently.” Father also testified that he had “significant concerns” about the children returning to mother’s care.

The district court ruled that the department proved statutory grounds for TPR—abandonment, neglect of parental duties, palpable unfitness, failure to correct conditions leading to out-of-home placement, and the children are neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(1), (2), (4), (5), (8) (2022).

The district court also ruled that TPR is in the children’s best interests. The district court balanced the three relevant factors—mother’s interest in preserving the relationship, the children’s interests in preserving the relationship, and competing interests of the children. The district court noted that a competing interest is stability for the children, and a relevant consideration is the amount of time the children have been in out-of-home placement. The district court gave “great weight” to the children’s interest in having a “stable caregiver and living in a home free of domestic violence and physical abuse.”

Mother moved for amended findings or a new trial. Mother sought to remove any finding that she physically abused the children, claiming that the district court’s finding that she abused the children relied on “evidence that was not offered or received at trial.” Mother also challenged the determination that TPR is in the children’s best interests, claiming that the evidence did not support such finding.

The district court denied mother’s motion for a new trial but amended its findings to exclude references to reports that mother physically abused the children. Although removing specific findings that mother abused the children, the district court retained the

finding that the department “determined there was a preponderance of evidence to support a finding of physical abuse of [one child] by [mother].” This appeal followed.

DECISION

Best interests

This court may affirm the district court’s TPR order when at least one statutory ground for TPR is supported by clear and convincing evidence, TPR is in the best interests of the children, and the department has made reasonable reunification efforts or those efforts are not required. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *see* Minn. Stat. § 260.012(a) (2022). Mother argues only that the evidence does not show that TPR is in the children’s best interests.

When at least one statutory basis for TPR exists, the best interests of the children are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2022). In considering the children’s best interests, the district court “must balance three factors: (1) the child[ren]’s interest[s] in preserving the parent-child relationship; (2) the parent’s interest in preserving the parent-child relationship; and (3) any competing interest[s] of the child[ren].” *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004) (quotation omitted); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii) (requiring district court to make findings addressing these factors in TPR proceedings). Competing interests of the children “include a stable environment, health considerations, and the child[ren]’s preferences.” *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013).

When reviewing TPR decisions, this court gives “[c]onsiderable deference” to the district court because it is in a “superior position to assess the credibility of witnesses.”

In re Welfare of Child of S.S.W., 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This court will not reverse a district court’s best-interests determination absent an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Here, the district court balanced the three relevant factors. The district court stated that the children had been in out-of-home placement for 511 days. The district court found that the children have a competing interest in stability and gave “great weight” to the children’s interest in having a “stable caregiver and living in a home free of domestic violence and physical abuse.”

Mother argues that the district court failed to explain how TPR was necessary to meet the competing interest that the children have in a stable home free of domestic abuse. She claims that the children are currently in such an environment and will remain in that environment if her parental rights were not terminated. She also claims that because father’s rights were not terminated and custody was to be transferred to the children’s paternal grandmother, there was no benefit to the children in terminating her rights because they would not be free to be adopted.

But the record supports the district court’s determination. The district court ruled that five statutory bases for TPR exist. The findings supporting these determinations also

support the district court's conclusion that TPR is in the children's best interests. The record shows that the children were abused while in mother's care. Mother then left the state and has had no contact with the children since February 2022. The social worker testified that TPR was in the children's best interests because mother failed to engage in the case plan and failed to demonstrate any desire to have a relationship with the children. The district court found the social worker to be credible, and we must defer to that finding.

Mother's main argument is that TPR was not necessary because father's rights were not terminated, and the children will not be adopted. But while adoption is something that the district court may consider, *see In re Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998) (discussing relationship between adoptability and TPR), the importance of a stable and safe environment was a strong factor for the district court to consider in this matter. And mother's and father's situations are different. They are not married, and they do not live together. The TPR proceeding related only to mother's parental rights. Additionally, the children were doing well in their grandmother's care. Relative out-of-home placement is preferred and should not be a reason to delay a permanency proceeding. The district court did not abuse its discretion in determining that TPR is in the children's best interests.

Evidence

Mother also argues that the district court relied on evidence that was not admitted to find that there was a preponderance of evidence supporting a finding that mother committed physical abuse. Mother claims that this finding is based on hearsay that the parties agreed would be inadmissible. We review evidentiary rulings in a TPR trial for an abuse of discretion. *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003).

At trial, the parties stipulated to the district court admitting certain exhibits with limitations. The district court was to consider “statements made by [the social worker] for her efforts and what she has done in the case” and “the statements of the children.” Essentially, the district court could consider anything that was written directly by the social worker but would disregard anything from a third party. For example, if a child commented to the social worker and the social worker made a note, the district court could consider it. But if a child made a comment to any other person and that person reported it to the social worker, the district court could not consider it.

In its amended findings, the district court stated that it would “remove from its [o]rder any reference to the children’s statements of abuse . . . that were reported to the [d]epartment by a third-party service provider.” But the district court retained a finding that the department made a maltreatment determination against mother, as that determination was “a statement by a [d]epartment social worker” and thus stipulated to by the parties. As the district court concluded, the parties stipulated that the district court could consider statements made by the social workers. It was not an abuse of discretion for the district court to consider statements made by the involved social workers.

Additionally, although the district court found that the department made a maltreatment determination, the district court’s TPR decision focused on mother’s abandonment of the children, her neglect of her parental duties, her failure to correct conditions leading to out-of-home placement, and the fact that the children are neglected and in foster care. The district court gave weight to the fact that the children had been in out-of-home placement for over 500 days and mother had made no effort to see the children

and did not work any part of her case plan. While the district court found that the department found maltreatment, the district court did not consider this to be any more important than mother's abandonment of her children.

Mother also claims that the district court impermissibly took judicial notice of "prehearing reports and Guardian ad Litem reports in Court Files No. 27-JV-22-1045 and 27-JV-21-2263. . . . [And] Out of Home Placement Plans in these matters." Mother "requests that any findings attributed to [these] documents be excluded from the factual record on appeal," but she does not point to any finding based on these records. Without a specific finding to review, we are unable to determine if the district court erred. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (stating that this court will not grant new trial based on improper evidentiary ruling unless challenging party demonstrates prejudicial error).

Affirmed.